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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,945	02/27/2004	Paul Dabrowa	MHAWK9	5790

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EXAMINER	
KAUFFMAN, BRIAN K	
ART UNIT	**PAPER NUMBER**
3765	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/789,945	DABROWA ET AL.	
	Examiner	Art Unit	
	Brian K. Kauffman	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *4-39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *20* is/are allowed.

6)☒ Claim(s) *4-19 and 21-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 August 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Examiner's Note

In the previous office action, the examiner made a typographical error. The examiner wrote claim 25 in place of claim 35 in the 35 U.S.C. 102(b) / 35 U.S.C. 103(a) rejection. The bulk of claim 35 was rejected in that claim, and claim 35 was noted as rejected on the cover sheet. In addition, the applicant made no arguments in regard to claim 35 in the response to the previous office action. Therefore, the error will have no bearing on the finality of this action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4-12, 15-19, 21-34, and 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Card et al. (5,058,518).

In regard to claims 4-8, Card et al. discloses a method of validating a pattern for a tufting machine, the method comprising: providing a pattern; providing operational characteristics of a tufting machine; and determining whether the pattern may be implemented on the tufting machine, based on the operational characteristics (col. 8, lines 63-68 and col. 9, lines 1-9).

In regard to claims 9-12 and 15-17, Card et al. discloses a method of designating how to load a tufting machine to implement a pattern, the method comprising:

generating a color palette report including a percentage of each color used in a pattern; and generating a loading report indicating at least one color corresponding to at least one needle of a tufting machine, wherein the loading report provides loading instructions of the tufting machine (col. 8, lines 63-68 and col. 9, lines 1-9).

In regard to claims 18-19 and 21-25, Card et al. discloses a system for validating a pattern for a tufting machine, the system comprising: a pattern storage unit adapted to store a pattern; a machine data storage unit adapted to store operational characteristics of a tufting machine; a control unit adapted to receive the pattern from the pattern storage unit, receive operational characteristics of the tufting machine from the machine data storage unit, and determine whether the pattern may be implemented on the tufting machine based on the operational characteristics (col. 7, lines 8-12, col. 8, lines 1-43).

In regard to claims 26-30, Card et al. discloses a computer-readable medium comprising computer-executable instructions for validating a pattern for a tufting machine, the computer-executable instructions comprising: providing a pattern; providing operational characteristics of the tufting machine; and determining whether the pattern may be implemented on the tufting machine, based on the operational characteristics (col. 8, lines 63-68 and col. 9, lines 1-9).

In regard to claims 31-34 and 37-39, Card et al. discloses a computer-readable medium comprising computer-executable instructions for designating how to load a tufting machine to implement a pattern, the computer-executable instructions comprising: generating a color palette report including a percentage of each color used in a pattern; and generating a loading report indicating at least one color corresponding

to at least one needle of a tufting machine, wherein the loading report provides loading instructions of the tufting machine (col. 8, lines 63-68 and col. 9, lines 1-9).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 14 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Card et al. (5,058,518) in view of Eberwein et al. (3,875,883). Card et al. does not disclose determining at least one set of yarn cones that correspond to at least one needle of the tufting machine. Eberwein et al. does disclose determining at least one set of yarn cones that correspond to at least one needle of the tufting machine (col. 4, lines 49-54). Matching the corresponding yarn cones to each needle aids in the setup of the tufting machine. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Card et al.'s method and computer medium to include determining at least one set of yarn cones that correspond to at least

one needle of the tufting machine as taught by Eberwein et al. in order to aid the set up of the tufting machine.

Claims 13 and 35 are rejected under 35 U.S.C. 103(a) as obvious over Card et al. (5,058,518). Card et al. does not specifically disclose determining the number of yarn cones necessary to implement a pattern on the tufting machine. However, determining the number of cones used in a pattern is a widely used practice in the industry that allows for efficient use of materials. It would have been obvious to one having ordinary skill in the art at the time the invention was made to determine the number of cones necessary to implement a pattern on the tufting machine because it is a practice that is widely used in the industry, and it allows for an efficient use of materials.

Allowable Subject Matter

Claim 20 is allowed.

The following is an examiner's statement of reasons for allowance: claim 20 specifically requires that the control unit determines whether the number of colors is greater than a predetermined number of colors associated with at least one needle to the tufting machine.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

In regard to the drawings, the objection has been withdrawn. The applicant states that examiner Brian Kauffman intends to grant the *Petition for Color Drawings*. Examiner Brian Kauffman does not have the authority to grant such a petition. Any such grant would be submitted in a separate mailing.

Applicant's arguments filed 6/27/05 have been fully considered but they are not persuasive.

In regard to claims 4-8 and 26-30, the applicant argues that Card et al. does not disclose a determination as to whether a pattern may be implemented on a tufting machine, based on operational characteristics. Card et al. does disclose a determination as to whether a pattern may be implemented on a tufting machine, based on operational characteristics. In Card et al.'s device, the pattern is created according to operational characteristics. The pattern is then loaded onto a tufting machine. The simple fact that the pattern has been loaded onto a tufting machine means that it has been determined that the pattern might be implemented on the tufting machine. It does not make sense that an operator would go through the trouble of loading a pattern unless the operator determined that the pattern might be implemented on the machine.

In regard to claims 9-12,15-17, 31-34, and 37-39, the applicant argues that Card et al. does not disclose designating how to load a tufting machine to implement a pattern. Card et al. does disclose designating how to load a tufting machine to implement a pattern. Card et al. discloses the yarn color thread-up arrangement and illustrates it on the monitor (col. 9, lines 1-9).

In regard to claims 18-19 and 21-25, the applicant argues that Card et al. does not disclose a system that comprises a control unit adapted to determine whether a pattern may be implemented on a tufting machine based on operational characteristics. Card et al. does disclose a system that comprises a control unit adapted to determine whether a pattern may be implemented on a tufting machine based on operational characteristics. As was stated in the arguments above, Card et al. does disclose a determination as to whether a pattern may be implemented on a tufting machine, based on operational characteristics. The computer, which is considered a control unit, determines that the pattern may be implemented on the machine when it actually produces the tufted product. In other words, the fact that the product has been produced, proves that the computer has determined that the pattern may be implemented on the machine.

The examiner agrees with the applicant's arguments regarding the 35 U.S.C. 102(b) rejection of claims 13 and 25 and withdraws that rejection. However, the examiner maintains the 35 U.S.C. 103(a) rejection of claim 13 and also applies it to claim 35. The applicant argues that it is not widely known in the art to determine the number of cones necessary to implement the pattern on a tufting machine. The examiner disagrees. It is widely known in the art that carpet mills keep an inventory of yarn cones. This inventory is based on the production of the facility. It is necessary to know the number of cones required to implement a pattern in order to maintain the proper inventory for the facility. Therefore, it is widely known in the art to determine the number of cones necessary to implement the pattern on a tufting machine.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Kauffman whose telephone number is (571)272-4988. The examiner can normally be reached on M-F every week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571)272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BKK
9/7/05

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